

REMARKS/ARGUMENTS

At the outset, Applicant appreciates the thorough review and consideration of the subject application. The Non-Final Office Action of February 18, 2009 has been received and its contents carefully noted. Claims 1-8 and 10-14 are pending. In view of the following remarks, Applicant respectfully requests reconsideration and timely withdrawal of the pending objections and rejections for the reasons discussed below.

Drawing Objection

In the Office Action, the drawings were objected to as unlabeled rectangular box(es) should be provided with descriptive text labels. Applicant respectfully traverses this objection as being improper. The Office Action has failed to provide sufficient detail regarding which figures have been objected to as allegedly failing to have descriptive text labels. Moreover, the Office Action has failed to provide a legal basis for providing text labels generally. That is, 35 U.S.C. § 113, code of federal regulations, and M.P.E.P. provide general requirements for drawings, however, Applicant is unaware of any specific requirement for text labels to the drawings. Nevertheless, the drawings of the instant application provide text labels and/or reference numbers. Accordingly, Applicant respectfully submits the drawings are in full compliance with the United States Code and Code of Federal Regulations.

Therefore the objection to the drawings should be withdrawn.

Rejections Under 35 U.S.C. § 103

Claims 1-8 and 10-13 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent Publication No. 2004/0028121 issued to *Fitton* ("Fitton") in view of U.S. Patent No. 7,313,114 issued to *Karjalainen* ("Karjalainen"). Applicant respectfully traverses this rejection for at least the

following reasons.

The Office has failed to establish a *prima facie* case of obviousness. The Federal Circuit has held many times that to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Furthermore, “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). The Federal Circuit has also held many times that the Examiner must provide objective evidence of a motivation for combining the teachings of cited references in the manner claimed. See e.g., *In re Sang-Su Lee*, 277 F.3d 1338, 1343; 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). Further, “this factual question of motivation is material to patentability, and could not be resolved on subjective belief and unknown authority.” *Id.* at 277 F.3d 1343-1344; 61 USPQ2d 1433. The recent U.S. Supreme Court case, *KSR Int’l Co. v. Teleflex, Inc.*, does not change these requirements. 127 U.S. 1727, 1740-41 (U.S. 2007).

Independent claims 1 and 11 are allowable as they each recite a combination of features, including, *inter alia*, each rake finger including a subtracter, adder and unscrambler. These features are not taught or suggested by *Fitton* or *Karjalainen* either singly or in combination. The Office Action admits these deficiencies in stating “Fitton does not specifically disclose the interference cancellation units 910 are included in the rake fingers.” (Office Action at 3). The Office Action attempts to cure these deficiencies by stating “it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the interface cancellation units to be integrated in the rake fingers, since it has been held that rearranging parts of an invention involved only routine skill in the art. *In re Japikse*, 86 USPQ 70 (CCPA 1950).” (Office Action at 3). The Office’s conclusion and reliance on *Japikse* is improper.

Japikse does not support the Office's position of obviousness. In *Japikse* the claims were directed towards a hydraulic power press which read on the prior art except with regard to the position of the starting switch. The Board held in *Japikse* that the application was unpatentable because shifting the position of the starting switch would not have modified the operation of the device. *Id.* (*emphasis added*). In the instant case the proposed rearrangement of the interference cancellation unit would clearly modify the operation of *Fitton*. That is, it is not simply a mere rearrangement of parts. Thus, the Office's arguments are materially deficient and incorrectly frame the issue. Accordingly, the Office's position that it is obvious to modify *Fitton* by integrating the interference units in the rake fingers should be withdrawn.

Applicant also submits that the rejection over *Fitton* in view of *Karjalainen* is improper. The Office has provided no evidence why the skilled artisan would modify *Fitton* with *Karjalainen*. In accordance with *KSR Int'l Co. v. Teleflex* "[a] patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art." See *KSR Int'l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 1741 (U.S. 2007). Instead, in accordance with M.P.E.P. § 2142, the key to supporting an obviousness rejection is the clear articulation of reasons for the proposed modification. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." See *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

In this case, the Office Action provides only a conclusory statement of increasing performance based upon improper hindsight. In order for the Office's combination to have any meaning, *Fitton* must be modified somehow (in a manner undisclosed and unsuggested by the Office) to incorporate the teachings of *Karjalainen*. Accordingly, the rejection is improper.

Independent claim 4 is allowable as it recites a combination of features, including, *inter alia*, unscrambling the user data received via the rake finger, for similar reasons as discussed above. In addition, there is no teaching or suggestion of subtracting the evaluation of interference to include subtracting the evaluation of interference from the received user data in the rake finger as recited in claim 4. The Office fails to even address this limitation.

For at least the foregoing reasons, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection.

CONCLUSION

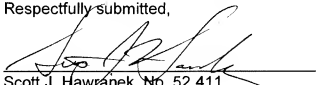
Applicant believes that a full and complete response has been made to the pending Office Action and respectfully submits that all of the stated objections and grounds for rejection have been overcome or rendered moot. Accordingly, Applicant respectfully submits that all pending claims are allowable and that the application is in condition for allowance.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact the Applicant's undersigned representative at the number below to expedite prosecution. Prompt and favorable consideration of this Reply is respectfully requested.

No fee is believed due for this submittal. However, any fee deficiency associated with this submittal may be charged to Deposit Account No. 50-1123.

Respectfully submitted,

May 18, 2009



Scott J. Hawranek, No. 52,411
Hogan & Hartson LLP
One Tabor Center
1200 17th Street, Suite 1500
Denver, Colorado 80202
(719) 448-5920 Tel
(303) 899-7333 Fax